



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission
FROM: Commission Secretary's Office *scf*
DATE: November 14, 2013
SUBJECT: Comments on Draft AO 2013-15
(Conservative Action Fund)

Attached is a timely submitted supplemental comment received from Sai, President on behalf of Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc.

This matter is on the November 14, 2013 Open Meeting Agenda.

Attachment

MYL PAC and MYL C4
% Nick Staddon, Secretary
122 Pinecrest Rd.
Durham, NC 27705

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463
ao@fec.gov

Re: AO 2013-15 Conservative Action Fund

November 13, 2013

Dear Commissioners:

Please accept this comment regarding AO 2013-15 Conservative Action Fund on behalf of Make Your Laws PAC, Inc. (MYL PAC) and Make Your Laws Advocacy, Inc. (MYL C4).

This comment supplements our previous comment, to address additional issues raised by AO drafts B & C in agenda document 13-45-A, posted earlier today.¹

p 5 fn 5 We agree that the FEC should not and cannot decide how Bitcoin is to be treated for the purposes of laws outside of its jurisdiction (such as those regulated by the IRS, FinCEN, and SEC).

However, an interpretation of *the FECA* requires reaching this question, as the Act has specific regulatory definitions of 'money', 'cash', 'currency', etc which dictate how contributions are treated differently. Though the Commission can find other agencies' interpretations of other laws' definitions persuasive to the extent that they are relevant, it does not need to *depend* on them (as the analysis of *Shavers* in both our previous comment and draft 13-45 shows).

Likewise, other agencies will not need to depend on the Commission's finding; one federal agency's opinions are not binding precedent for other, unrelated agencies.

¹ We note that the public was given less than a day to respond to two new draft AOs, without the assistance of a redline or electronically comparable version — a day that was primarily taken up by an FEC seminar for non-connected PACs. This is not adequate notice under 5 USC 553(b, c). In the future, we would appreciate being given a more reasonable amount of time to respond to new AO drafts, and publication of redlined changes between drafts would assist with that.

Also, we note that the version of our comment posted online was printed and scanned, thereby breaking its hyperlinks (some of which were quotative) and rendering it illegible to people with disabilities who rely on electronic formats. We ask that the Commission direct its staff to appropriately preserve electronic documents when posting them, so that their content is not harmed in this way.

In the meantime, our comments can be downloaded in their original form at <https://makeyourlaws.org/fec>.

The Commission could revisit this finding should circumstances change, but is faced with the question under *current* circumstances. Its closing caveat already says "the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law", which covers this issue.

p 7 fn 6 The Commission should not avoid the question of how CAF should determine whether a contributor is or is not eligible. Given the inherent problems with reliable attribution of Bitcoin transactions that we discussed in section 1 part 5 of our previous comment, without clear guidance, CAF could violate the FECA by failing to obtain adequate information or by "refunding" a contribution to a third party.

The question of what constitutes an adequate method of attribution is *central* to any acceptance of Bitcoin by a PAC. Bitcoins are *not* like phone contributions, where contributors' information can be obtained from the phone company (which in turn derives that information from sources such as bank and credit card payments, ID verification, physical mail, etc). Bitcoins' transaction anonymity is not merely incidental, but intrinsic to their design. It is not currently feasible for a PAC to determine a Bitcoin user's true identity, and this is the cause of multiple serious problems (see e.g. page 13 of our previous comment).

Some Bitcoin contributors' true and claimed identities *will* diverge, *undetectedly*, and the Commission's ruling should account for this fact.

If the Commission accepts CAF's bald assertion that it will comply with identification requirements, without an explanation of *how* it intends to do so in the face of the many problems we noted, its opinion will not give enough clarity for PACs to rely on, and would require follow-up AORs to resolve these questions.

p 35-37 We believe that 13-45-A page 16 (and footnote 17) correctly refutes the legal argument presented here. We also note that page 37 lines 12-13 incorrectly quote 11 CFR 102.10, which says "all disbursements by a political committee" and not "all political committee *cash* disbursements" (emphasis added).

More to the point, we would like to remind the Commission that as a matter of policy, contributions to political committees — like payments for advertising — require *more* scrutiny than payments for ordinary goods and services, not less.

Would the Commission approve of (for instance) a suitcase of gold bullion as an

appropriate means for PAC-to-PAC transfers? (Bitcoin transactions can be far *less* traceable than gold bullion.)

Would the Commission approve of a PAC-to-PAC transfer with no properly auditable paper trail? (See pages 9-10 of our previous comment for a solution.)

Allowing a PAC to contribute to another PAC through an anonymous medium of exchange like Bitcoin, without adequate protections and documentation requirements, would harm the public interest in transparency of campaign finance which the Commission was created to enforce.

Not allowing a PAC to disburse Bitcoins for services (e.g. miner transaction fees) would prevent its use of Bitcoins at all. (See page 14 of our previous comment.)

We would like to emphasize that *none* of the three draft AOs published so far address any of the serious problems we discussed (and proposed solutions for) in our previous comment.

We therefore urge the Commission to vote *against* drafts A, B, and C, and to ask its legal staff to prepare a draft that addresses the problems and solutions we discussed.

Again, if you (or your staff) have any questions or comments, please do not hesitate to contact me at sai@makeyourlaws.org or (717) 469-5695.

Sincerely,
Sai
President & Treasurer
Make Your Laws PAC, Inc.
Make Your Laws Advocacy, Inc.